

Service Date: September 5, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Joint Application)	UTILITY DIVISION
of MCI Telecommunications Corporation)	
and British Telecommunications plc for)	DOCKET NO. D96.11.184
Approval of Merger.)	ORDER NO. 6004

FINAL ORDER

Introduction

1. On November 8, 1996 MCI Telecommunications Corporation (MCI) and British Telecommunications plc (BT) notified the Montana Public Service Commission (Commission) of their intention to file an application for approval of a merger between the two companies. MCI filed the application on January 27, 1997.

Findings of Fact and Commission Decision

A. Overview of Merger

2. MCI, a Delaware corporation, is a provider of communications and information technology services for individuals and businesses worldwide. MCI is headquartered in Washington, D.C. with 300 offices worldwide. Through its network, MCI is expanding from its core long distance business to provide local services, international services, wireless, Internet/ online services, conferencing services and direct broadcasting satellite services. MCI currently has regulatory authority to offer local service in twenty states and, as of the filing date, applications were pending in four others. MCI intends to expand its presence in the local exchange market and offer local services by constructing its own local networks, reselling local exchange carrier services, leasing network elements (unbundled loops), and by forming alliances with other new

market entrants to build and lease facilities.

3. BT is the United Kingdom's largest provider of communications services. BT provides a full range of services in the United Kingdom to business and residential customers including local, long distance, international, wireless, paging, Internet, conferencing and multimedia services. BT also operates a technology research and development laboratory in Martlesham Heath, England.

4. Pursuant to this proposed merger of MCI and BT, the two companies will create a unified telecommunications company to be named Concert plc (Concert), following on their global joint venture company of the same name. Concert will serve as the parent company to both MCI and BT. Under the terms of the merger agreement, each MCI share was to be converted into .54 of a Concert American Depositary Share (ADS), equivalent to .54 of a BT ADS, plus \$6 in cash. The Board of Directors of Concert, to be co-chaired by the current chairmen of BT and MCI, will be comprised of fifteen members, eight from BT and seven from MCI. This merger will create the first global communications company with transglobal customers, a multinational management team, dual transatlantic headquarters in Washington D.C. and London, and shares traded on three stock exchanges globally. MCI and BT will continue to sell and service customers under their own names in their respective home countries.

5. On Friday, August 22, 1997 new merger terms were announced. Under the new terms each MCI share will be converted into .375 of a Concert ADS, equivalent to .375 of a BT ADS, plus \$7.75 in cash. This change in terms reduced the amount paid by BT from \$21 billion to \$17 billion.

6. The Applicants believe this merger is in the public interest. The merger combines the financial resources and global position of BT with the momentum and competitive market expertise of MCI and is expected to bring benefits to its customers by providing greater reach, integrated end-to-end services and the combined strength of the two companies. For MCI, the merger will provide financial strength and stability. MCI will also benefit from BT's experience in

providing local telecommunications services. BT will gain access to the North American telecommunications market. Concert will be able to capture an increasing share of the global telecommunications market through BT's broad range of international relationships. Concert will also be able to capitalize on MCI's growth record in the United States long distance market as well as its success in opening up new markets to competition.

7. MCI expects Montana customers to benefit directly from the merger through lower prices and service and technological innovations spurred by the diverse experiences of MCI and BT experts as well as the joined capital resources and efficiencies. MCI will offer Montana customers an integrated set of products and services that will improve local, domestic and international communications. The increased competition expected to result from the merger should generate lower prices, greater choice, a greater variety of service options and more rapid deployment of advanced technologies for local telephone customers.

B. FCC Approval

8. On August 21, 1997, the Federal Communications Commission (FCC) approved the proposed merger of MCI and BT subject to conditions and safeguards that the FCC believes are necessary to ensure that the merger will enhance competition in the United States. The FCC concluded that the following commitments and developments will ensure that the merger will have procompetitive effects:

- 1) BT recently agreed to accept a settlement rate of 7 cents per minute, one of the lowest in the world, to terminate United States-outbound calls in the United Kingdom.
- 2) MCI has committed to support the equal access initiatives of the European Union. Under equal access, customers would have the option of pre-subscribing to carriers other than BT for United Kingdom-outbound long distance and international calls. Currently, such customers must dial special access codes on a call-by-call basis to use BT's competitors. MCI also acknowledged that the FCC could take enforcement action against MCI if BT fails to comply with European Union equal access requirements as implemented by the United Kingdom. Accordingly,

the FCC conditioned its grant of the license transfer upon MCI's non-acceptance of BT traffic originated in the United Kingdom to the extent BT is found to be in non-compliance with United Kingdom regulations implementing any European Union equal access requirements.

3) BT and MCI have committed to the European Commission to make substantial capacity on the TAT-12/13 transatlantic submarine cable available to newly licensed competitors. In addition, MCI has agreed to provide these new competitors with adequate matching backhaul capacity in the United States.

4) BT and the United Kingdom Government recently announced that the United Kingdom Government will redeem its "special share" in BT. The U.K. Government's decision to sever all ownership ties with BT provides additional assurance that BT will not enjoy any special advantage over other carriers.

C. Analysis

9. Based on the application and its investigation, the Commission concludes that the proposed merger is in the public interest and, therefore, should be approved. MCI will have access to operating and administrative expertise that will enable it to continue providing quality service to current MCI and BT customers. Concert will be able to maintain substantial capital expenditures in existing operations and will invest for growth in new markets. The merger will promote competition in local telephone service, consistent with Commission rules, relevant Montana statutes, and the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.). MCI's current sales and support organization servicing Montana will not change.

10. Based on the application, the merger will bring benefits to Montana customers through lower prices, greater choice among providers, more service options and more rapid deployment of advanced technologies for local telephone customers.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities operating in Montana. Section 69-3-102, MCA. MCI is a public utility offering "regulated telecommunications services" in the State of Montana as defined in § 69-3-803(3), MCA. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Commission has jurisdiction over all utility activities which affect a utility's duty to render "reasonably adequate services and facilities" at "reasonable and just" rates, and has the authority to "do all things necessary and convenient in the exercise of its powers," including the sale or acquisition of public utilities that provide intrastate regulated telecommunications services. Sections 69-3-103 and -201, MCA.

4. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. See generally, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.).

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

Order

THEREFORE, based upon the foregoing, it is ORDERED that, effective upon ratification of the merger by MCI and BT shareholders, the proposed merger of MCI and BT is APPROVED.

Approval of the proposed merger does not constitute determination or approval of rates or any rate making issues.

DONE AND DATED this 2nd day of September, 1997, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.